

## REMARKS

In the Office Action mailed September 19, 2007, the Examiner finally rejected claims 20-37 and now pending are claims 20-37. The below remarks represent Applicants Early Response to this final office action.

### Finality of the rejection

Applicants traverse the final rejection mailed on 9/19/07 and request that the finality of the rejection be withdrawn.

Applicants contend that the Examiner had insufficient basis to make this action final. Pursuant to MPEP 706.07 it is clear that when an applicant is amending the claims for the purpose of clarifying the respective invention and as stated in Applicants last office action response, then making the next rejection final is inappropriate, wherein MPEP 706.07 in part states:

"While the rules no longer give to an applicant the right to "amend as often as the examiner presents new references or reasons for rejection," present practice does not sanction hasty and ill-considered final rejections. The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application."

Further, Applicants contend that the Examiner has misapplied MPEP 706.07(a) in stating the last amendment necessitated the new ground of rejection. It is unclear at best to take the last amendments, particularly as to claims 20-33, which essentially only changed the previously presented claims from including "a salt-crystal, protein, or combination thereof " to one which eliminates the protein and goes to "a salt-crystal or a salt-crystal and protein combination", and state that this was the cause of the new ground for the rejection, particularly when the newly cited reference (Melling et al.) does not even speak to the use of a protein or a salt-crystal and protein combination and its disclosed chemistry is completely inorganic in nature.

Even further, Applicants contend that the Examiner has failed to fully examine the new claims 34-37 as required pursuant to 37 CFR § 1.104. It is clear that an Applicant can expect that "[t]he examination shall be complete with respect both to compliance of the application or patent under reexamination with the applicable statutes and rules and to the patentability of the invention as claimed, as well as with respect to matters of form, unless otherwise indicated."

Particularly, Applicants contend that the Examiner, evidenced by the lack of references to steps h-k of claim 35 and how they are obvious given the cited art, failed to consider claims 35-37. Accordingly, Applicants request that the finality of the rejection be withdrawn.

#### Rejection under 35 U.S.C. §103(a)

The Examiner rejected claims 20-37 as obvious over Melling et al. in view of Sachs. This rejection is traversed. Applicant contends that Melling et al. does not even speak to the use of a protein or a salt-crystal and protein combination and its disclosed chemistry is completely inorganic in nature. The Examiner has failed to address the use of a protein or give a reason why a person of ordinary skill in the art would have combined these references. Additionally, Applicant contends that the Melling et al. process of mold formation using an aqueous particle binder/particle solution as taught (see Melling at col. 4, lines 11+) would be inherently inoperable as applied to either Applicants present invention or to the Sachs reference (both being a substantially dry layering system), thus negating any motivation by one ordinary skilled in the art to combine these references.

According to the Supreme Court decision on KSR Int'l. Co., v. Teleflex, Inc. U.S.P.Q. 2d \_\_ (2007), in formulating a rejection under 35 U.S.C. 5 103(a) based upon a combination of prior art elements, it remains necessary to identify the reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed. The Examiner has not identified any reason to combine the above references. The bare conclusion by the Examiner to the contrary is insufficient because the Examiner has not identified any reason within Melling et al., Sachs or the art that would suggest the desirability of modifying Melling or Sachs to achieve the present invention. Applicant respectfully requests that this rejection be withdrawn.

#### CONCLUSIONS

In view of Applicants' remarks, the Examiner's finality of the rejection is believed to be inappropriate. Additionally, in view of Applicants' remarks, the Examiner's rejections are believed to be rendered moot. Accordingly, Applicants submit that the finality of the rejection should be removed and that the present application is in condition for allowance and requests that the Examiner at a minimum remove the finality of the office action and/or pass the case to issue at the earliest convenience. Should the Examiner have any questions regarding the present application the Examiner is requested to contact the undersigned at (248) 292-2920.

If for some reason Applicants have not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent the

abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge our Deposit Account No. 50-1097 for any fee which may be due.

Respectfully submitted,

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